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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,559	10/03/2001	E. Marlowe Goble	GOBLE-I	1489

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EXAMINER

BLANCO, JAVIER G

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 07/07/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary

Application No.

09/970,559

Applicant(s)

GOBLE, E. MARLOWE

Examiner

Javier G. Blanco

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of (i) **Graft ligament**: species A (one or more strands of hamstring tendon), (ii) **Apparatus**: species A (Figures 7-16), and (iii) **Method of pulling wire suture down bone tunnel**: species A (Figures 7-14) in Paper No. 7 is acknowledged. Applicant indicated in Paper No. 7 that those species are represented in claims 2 and 4.
2. Claims 1 and 3 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The disclosure is objected to because of the following informality: the title of the specification does not match the title of the Oath or Declaration (i.e., the use of the words "reconstructing" and "constructing"). Appropriate correction is required.

Claim Objections

5. Claim 4 is objected to because of the following informality:

a. On claim 4, line 34, please substitute "a graft ligament" with --said graft ligament--. Otherwise it will look like there is a second graft ligament. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 2 and 4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

a. Each of claims 2 and 4, lines 19-20 and 21-22 respectively, claim that the crimp has "retaining means for attachment to said flexible filament". Since Applicant chose Apparatus' Species A (embodied in Figures 7-16), there is no description in the specification and/or figures disclosing/describing "crimp 65" as having "retaining means" (see Figures 7-16; see pages 7-9).

b. Each of claims 2 and 4, lines 20-22 and lines 22-24 respectively, claim that the crimp has "a third diameter, said third diameter being greater than said first diameter". Since Applicant chose Apparatus' Species A (embodied in Figures 7-16), there is no description in the specification and/or figures disclosing/describing "crimp 65" as having "a third diameter, said third diameter being greater than said first diameter" (see Figures 7-16; see pages 7-9).

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c. Claim 4 claims as the last step of the method claim “attaching said clamp onto said flexible filament adjacent to said proximal end of said bone fixation element” (see lines 37-39). Since Applicant chose Apparatus’ Species A (embodied in Figures 7-16), there is no description in the specification and/or figures disclosing/describing a “clamp” or “attaching said clamp onto said flexible filament adjacent to said proximal end of said bone fixation element” (see Figures 7-16; see pages 7-9).

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 4 recites the limitation "said clamp" in line 37. There is insufficient antecedent basis for this limitation in the claim.

Allowable Subject Matter

10. Claims 2 and 4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Goble et al. (US 4,927,421 A), Bowman et al. (US 4,950,270 A), Howell et al. (US


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5,674,224 A), Roger et al. (US 6,235,057 B1), Wyman et al. (US 6,461,373 B2), and Jarvinen (US 6,562,071 B2).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 703-605-4259. The examiner can normally be reached on M-F (8:00 a.m.-5:00 p.m.), first Friday of the bi-week off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



JGB

June 27, 2003



David H. Willse
Primary Examiner